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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,328	12/14/2001	Mario Tenuta	2527-1A1	1143

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09/02/2003

Eric Fincham  
316 Knowlton Road  
Lac Brome, QC J0E 1V0  
CANADA

EXAMINER

NAFF, DAVID M

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/07328

Applicant(s)

Tenuta et al

Examiner

Haff

Group Art Unit

1657

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/30/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-4 is/are pending in the application.
- Of the above claim(s) 1, 3 + 4 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 2 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

In a response of 5/30/03 to a restriction requirement of 4/2/03, applicants amended claims 3 and 4 to be dependent on claim 1 (the only claim in Group I), and elected claims 2-4 of Group II with traverse. Since claims 3 and 4 have been made dependent on claim 1, these claims are in Group I with claim 1, and only claim 2 remains as the elected claim of Group II.

In the traverse, applicants point out that claims 2-4 constitute the second part of claim 1 and that a search has already been conducted in the parent application for the first part of claim 1. However, a search has not been conducted in the parent application for either part of claim 1 since no claim searched in the parent application requires an invention as required by either part of claim 1, or of claim 2. The invention of claims 1, 3 and 4 of Group I is distinct from the invention of claim 2 of Group II for reasons in the restriction requirement, and the requirement is adhered to and made final.

Claims 1, 3 and 4 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7 of 5/30/03.

Claim 2 is examined on the merits.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooley (6,300,282 B1).

The claim is drawn to a method of controlling soilborne pathogens in soil having a carbon content of less than 1.7% by weight by adding a nitrogen containing material and a pH raising agent to raise the soil pH above 8.5.

Cooley discloses (col 1, lines 34-45) providing nitrogen to potato plants by dripping liquid urea ammonium nitrate of 28-32% nitrogen onto sides of the potato hill or applying granular urea ammonium nitrate onto sides of the potato hill, and repeating this

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process in 7-10 days later. After this, liquid urea ammonium nitrate may be sent through irrigation water.

It would have been obvious to apply adding liquid or granular urea ammonium nitrate as disclosed by Cooley to potato hill soil having an organic carbon content less than 1.7% by weight since this soil would have been conventionally available for potato planting. Due to the alkaline nature of urea ammonium nitrate, the urea ammonium nitrate would have inherently raised the pH of the potato hill soil to above 8.5. The claim does not exclude the nitrogen containing material also being the pH raising agent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 703-308-0520. The examiner can normally be reached on Monday-Friday about 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0196.

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David M. Naff  
Primary Examiner  
Art Unit 1651

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DMN  
8/29/03